IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23-01-2007

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MR. JUSTICE K. MOHAN RAM

HABEAS CORPUS PETITION NO.1152 OF 2006

Smt. Pitchaiammal
W/o. Subramanian .. Petitioner

Vs.

1. The Secretary to the Government,
   Prohibition and Excise Department,
   Fort St. George,
   Chennai 600 009.

2. The District Magistrate and
   District Collector,
   Nagappattinam District,
   Nagappattinam. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Habeas Corpus direction to call for the records relating to the detention order dated 3.4.2006 made in detention order C.O.C.No.10 of 2006 passed by the second respondent, quash the same and direct the respondents to produce the body of the detenue Tmt. Vanaja who has been detained in the Special Prison for women. Special Prison Campus at Trichy, before this Court and and set her at liberty.

For Petitioner : Mr.T.P. Senthilkumar

For Respondents : Mr.M. Babu Muthu Meeran
Addl. Public Prosecutor

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O R D E R

(Order of the Court was made by P.K. MISRA, J)

Heard Mr.T.P. Senthilkumar for the petitioner and Mr.M. Babu Muthu Meeran, Addl. Public Prosecutor for the respondents.

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2. The detenue was detained by order dated 3.4.2006 on the allegation that she was a bootlegger.

3. The occurrence on the basis of which the order of detention was passed took place on 25.3.2006 at 10.00 a.m. The detenue was arrested at the spot and materials were seized under Mahazar on 25.3.2006 at 10.00 a.m., and subsequently the seized materials were destroyed at 10.30 a.m. and at 10.45 a.m., observation mahazar was prepared. In such observation mahazar, which is at Page No.38 of the booklet, Cr.No.141 of 2006 of Keevalur Police Station under Sections 4(1)(i) r/w.4(1-A) of Tamil Nadu Prohibition Act, 1937 is described. However, from the First Information Report, available at Page No.34 of the booklet, it is apparent that the information regarding commission of the crime was received only at 12.00 noon on 25.3.2006 and at that stage the FIR was registered and Crime Number was obviously given. In the above background, learned counsel for the petitioner has submitted that there has been non-application of mind on the part of the detaining authority to such a glaring discrepancy.

4. If the observation mahazar was made at 10.45 am on 25.3.2006 and FIR was registered at 12.00 noon, it is not understood as to how the Crime Number was given in the observation mahazar. It was the duty of the detaining authority to apply mind at least to this apparent discrepancy before passing the order of the detention.

5. This aspect is very much clear from the Division Bench decision of this Court in 2004-1-L.W.(Crl.) 20 (SARAVANAMUTHU v. DISTRICT MAGISTRATE AND DISTRICT COLLECTOR, NAGAPATTINAM DISTRICT, NAGAPATTINAM AND ANOTHER), where Justice Sirpurkar, as His Lordship then was, speaking for the Bench, observed :-

> "3. From this, it is obvious that the crime number came to be supplied to the whole affair only after 4'O clock or as the case may be at 4.30 p.m. Learned counsel for the petitioner however drew our attention to pages 22, 24 and 25 of the booklet. Page 22 is the Destruction Mahazar. She points out that in that Destruction Mahazar, the crime number is written as Crime No.365/2002. Page 24 is the Observation Mahazar which observation was supposed to have taken place at 3.30 p.m. but there also Crime Number appears in the third line. Page 25 is the sketch drawn on the spot. In this also, there appears a crime number again. From this, the learned counsel points out that at the time when these documents were executed, there was no crime number available as the crime number became available only after the police party reached the police station

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and registered the F.I.R. Therefore, this was obviously a manufactured case and this was bound to be taken into consideration by the Detaining Authority while considering all these aspects and his not having considered these vital aspects amounts to non-application of mind."

6. Similar view has been subsequently expressed by another Division Bench of this Court in HCP.No.217 of 2006 dated 13.6.2006.

7. However, the learned Addl. Public Prosecutor submitted on the basis of the assertion made in the counter affidavit that over telephone crime number was obtained.

8. In the absence of any contemporaneous supporting document, we are unable to accept such a submission made in the counter affidavit and such submission is clearly an after-thought. In fact in the FIR it has been categorically stated that information was received at 12.00 noon. If that is so, the explanation that crime number was obtained over phone by 10.45 a.m. is not acceptable.

9. In such view of the matter, the order of detention is quashed and the Habeas Corpus Petition is allowed. The detenue shall be released forthwith unless her presence is required in any other case.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

dpk

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To

1. The Secretary to the Government,
   Prohibition and Excise Department,
   Fort St. George,
   Chennai 600 009.

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2. The District Magistrate and
   District Collector,
   Nagappattinam District,
   Nagappattinam.

3. The Public Prosecutor,
   High Court, Madras.

4. The Superintendent
special Prison for Women
Central Prison campus at Trichy.

(in duplicate for communication to Detenu)

5. The Joint Secretary to
Government
Public (Law and Order)
Fort St. George, Madras-9.

6. The Officer in charge
Sub Jail, Thiruvarur.

1 cc to M/s. T.P. Senthilkumar, Advoate, sr. 4921

HCP.NO.1152/2006

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